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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 SAN FRANCISCO DIVISION

5 - - - - -x  
6 SURGICAL INSTRUMENT SERVICE COMPANY, INC.,  
7 Plaintiff,  
8 -against-  
9 INTUITIVE SURGICAL, INC.,  
10 Defendant.

11 - - - - -x  
12 Virtual Zoom Deposition  
13 March 8, 2023  
14 9:00 a.m. CST

15  
16 VIRTUAL VIDEO DEPOSITION of RICHARD BERO,  
17 in the above-entitled action, held at the  
18 above time and place, taken before Jeremy  
19 Richman, a Shorthand Reporter and Notary  
20 Public of the State of New York, pursuant to  
21 the Federal Rules of Civil Procedure, and  
22 stipulations between Counsel.

23  
24 \* \* \*  
25

1  
2 APPEARANCES:

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15 PRESENT:

NATHANIEL ARMSTRONG, Videographer

16  
17 \* \* \*  
18  
19  
20  
21  
22  
23  
24  
25

1 R. BERO

2 THE VIDEOGRAPHER: Good 09:09:17

3 morning. We are now going on the 09:09:27

4 record at 9:09 a.m. Central time on 09:09:31

5 March 8, 2023. Please note that 09:09:35

6 this deposition is being conducted 09:09:37

7 virtually. The quality of the 09:09:40

8 recording depends on the quality of 09:09:42

9 the camera and internet connection 09:09:44

10 of the participants. What is seen 09:09:46

11 from the witness and heard on 09:09:48

12 screen is what will be recorded. 09:09:50

13 Audio and video recording will 09:09:52

14 continue to take place unless all 09:09:52

15 parties agree to go off the record. 09:09:52

16 This is media unit one of the 09:09:52

17 video recorded deposition of 09:09:59

18 Richard F. Bero, taken by counsel 09:09:59

19 for the defendant in the matter of 09:10:02

20 Surgical Instrument Service 09:10:05

21 Company, Inc. versus Intuitive 09:10:07

22 Surgical, Inc., filed in the United 09:10:12

23 States District Court for the 09:10:15

24 northern district of California, 09:10:16

25 San Francisco division, case number 09:10:19

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1 R. BERO

2 Q. And Mr. Humphrey is also an 09:25:41  
3 expert in this case; is that correct? 09:25:45

4 A. That's my understanding, yes. 09:25:46

5 Q. How many times did you speak 09:25:47  
6 with Mr. Humphrey in connection with 09:25:48  
7 drafting your reports in this case? 09:25:51

8 A. I believe just once. But 09:25:52  
9 again, it may have been twice. But I 09:25:56  
10 believe it was once. 09:25:59

11 Q. So similar to the other folks 09:26:00  
12 that you spoke with, would any notes of 09:26:04  
13 the conversation with Mr. Humphrey be 09:26:06  
14 captured in the draft reports at the 09:26:08  
15 time? 09:26:10

16 A. Yes. 09:26:10

17 Q. So anyone else other than 09:26:11  
18 Mr. Johnson, Mr. Posdal, Ms. Sargent 09:26:16  
19 and Mr. Humphrey that you spoke with in 09:26:20  
20 connection with drafting your reports 09:26:23  
21 in this case, setting aside attorneys? 09:26:24

22 A. Yes, in my most recent 09:26:27  
23 report, I believe it's titled my second 09:26:30  
24 rebuttal report dated March 1st, I 09:26:34  
25 spoke with Chris Gibson of Rebotix. 09:26:38

1 R. BERO

2 or CPA firm has experience in that 11:04:23  
3 particular industry or with, you know, 11:04:25  
4 whatever, so that the CPA can provide 11:04:30  
5 some specific guidance. Specialized 11:04:35  
6 guidance. Not always, but that could 11:04:39  
7 be part of a compilation process. 11:04:44

8 Q. So in this case, did you 11:04:46  
9 review any CPA documents related to 11:04:56  
10 SIS, financial statements? 11:05:03

11 A. What do you mean by "CPA 11:05:06  
12 documents"? 11:05:09

13 Q. Anything created by a CPA for 11:05:10  
14 SIS? 11:05:12

15 A. We reviewed, we have a 11:05:14  
16 summary of their financial statements 11:05:22  
17 for a few of the years that I 11:05:24  
18 summarized on one of my schedules. I 11:05:28  
19 don't recollect if a CPA reviewed that 11:05:33  
20 or compiled that or audited that. I 11:05:36  
21 just don't, I don't recollect. 11:05:45

22 Q. From lost profits 11:05:48  
23 methodology, have you ever heard of 11:06:00  
24 something called a yardstick approach? 11:06:02

25 A. Yes. 11:06:04

1 R. BERO

2 you recall that you've done at this 15:06:53  
3 moment; is that right? 15:06:55

4 A. It may be in here. 15:06:55  
5 Obviously, there are a lot of 15:06:59  
6 schedules, and the data is readily 15:07:01  
7 available. If I didn't actually do the 15:07:03  
8 calculation, it's pretty simple math. 15:07:09

9 Q. So I want to understand, kind 15:07:11  
10 of at a high level, what costs you're 15:07:20  
11 taking into account for your in-house 15:07:25  
12 model. So obviously conceptually, I 15:07:27  
13 understand you are subtracting costs 15:07:31  
14 that SIS would have incurred, so what 15:07:33  
15 are the main categories of costs that 15:07:36  
16 you analyze for your in-house model? 15:07:39

17 A. Well, I have the schedules on 15:07:42  
18 this, but just at a high level, there's 15:07:47  
19 costs associated with gathering and 15:07:53  
20 shipping the units to and from the 15:07:56  
21 service center. There's costs 15:08:02  
22 associated with any material required 15:08:07  
23 to repair the items. There's a cost 15:08:12  
24 associated with the actual repair 15:08:22  
25 itself, and so there's a cost 15:08:25

1 R. BERO

2 associated with selling, and having 15:08:30  
3 sales reps available. Although I think 15:08:34  
4 I address this in my analysis, SIS has 15:08:40  
5 pretty complete coverage, but they 15:08:46  
6 would potentially have -- they would 15:08:49  
7 have potentially hired additional 15:08:50  
8 customer service reps to gather the, 15:08:55  
9 sell and gather the devices as 15:09:04  
10 necessary. Although they wouldn't have 15:09:08  
11 been just hired for those product, they 15:09:10  
12 would have divvied up the geographical 15:09:13  
13 area a little bit differently. 15:09:20

14 Of course, you have the 15:09:23  
15 chips, and then I also incorporated 15:09:24  
16 administrative costs, overhead, I think 15:09:30  
17 those are the primary costs, as I 15:09:41  
18 recollect. 15:09:43

19 Q. And was it your intent to 15:09:43  
20 make reasonable estimates of those 15:09:46  
21 costs and deduct them from the revenue 15:09:48  
22 numbers that you generated? 15:09:53

23 A. It was. And, you know, as I 15:09:54  
24 talked about before, SIS, given their 15:09:58  
25 experience in servicing instruments, 15:10:06

1 R. BERO

2 and knowledge of the costs associated 15:10:09  
3 with that, felt that they could have 15:10:15  
4 repaired these things at a rate of two 15:10:24  
5 to three, basically, an hour per 15:10:28  
6 technician. The technician cost would 15:10:32  
7 have been less than, they were 15:10:35  
8 approximately 25 bucks an hour, 15:10:36  
9 something like that. Yeah, 25. 15:10:38

10 And it would have been a 15:10:42  
11 relatively low cost that would have had 15:10:46  
12 less than probably five dollars, if 15:10:50  
13 that, per unit in material costs. They 15:10:52  
14 would have had to hire a few additional 15:10:58  
15 sales reps over time, customer service 15:11:01  
16 reps, I guess. And in the grand scheme 15:11:05  
17 of things, their cost would have been 15:11:09  
18 significantly lower than what I'm 15:11:11  
19 including in my analysis. 15:11:12

20 My analysis is based on a 15:11:18  
21 broader cost estimate that Intuitive 15:11:19  
22 would have, had estimated it would 15:11:22  
23 incur for its broader refurbishment 15:11:24  
24 repair process, which had significantly 15:11:26  
25 more material cost, had higher rates 15:11:28



1 R. BERO

2 per hour than what SIS has, and even 15:11:37  
3 so, according to Mr. Morales' dep, he 15:11:42  
4 seemed to think that the rates used in 15:11:48  
5 the Intuitive, labor rates in the 15:11:49  
6 Intuitive analysis were high. 15:11:51

7 So yes, it was my intent to 15:11:53  
8 capture all those costs. And based on 15:11:55  
9 what I know, the analysis that I've 15:12:00  
10 incorporated captures far more costs 15:12:06  
11 than likely would have been incurred. 15:12:14  
12 However, without getting into the 15:12:17  
13 nitty-gritty and so forth, it would be 15:12:18  
14 very difficult to determine how much 15:12:22  
15 less that cost would have been for SIS 15:12:26  
16 to repair these products. 15:12:30

17 Q. And what about recruiting, 15:12:35  
18 training and retaining technicians? Is 15:12:37  
19 that a cost that's factored into the 15:12:41  
20 categories of costs that you considered 15:12:45  
21 for your analysis? 15:12:46

22 A. It's more than factored in, 15:12:47  
23 because, I mean, if one tech could do 15:12:53  
24 three, as they expected, 20 to 25 15:12:59  
25 repairs per unit, each repair would 15:13:04

1 R. BERO

2 cost, in terms of labor, something like 15:13:09

3 ten bucks. And you add less than five 15:13:16

4 bucks in material costs, it's 15 bucks 15:13:20

5 per repair. 15:13:22

6 My analysis has, built into 15:13:26

7 it, significantly more than that. 15:13:27

8 Multiples of that. Something like \$150 15:13:35

9 per repair, or it's more like \$200, I 15:13:38

10 believe, per repair, exclusive of 15:13:46

11 administrative costs, and so forth. 15:13:49

12 That doesn't, you know, that doesn't 15:13:52

13 even account for the overhead. I've 15:13:54

14 got more money for the overhead and so 15:13:57

15 forth. 15:14:00

16 MS. BASS: We've been going 15:14:07

17 about an hour, can we go off the 15:14:08

18 record? 15:14:11

19 MR. VAN HOVEN: Sure. 15:14:11

20 THE VIDEOGRAPHER: Time is 15:14:12

21 3:14 p.m., we are now off the 15:14:14

22 record, this ends unit five. 15:14:16

23 (Recess.) 15:14:24

24 THE VIDEOGRAPHER: Time is 15:32:46

25 3:32 p.m., we are back on the 15:32:47